82-1104

No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

GA TECHNOLOGIES INC.,
and GENERAL ATOMIC COMPANY,
Petitioners,

v.

UNITED NUCLEAR CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

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QUESTIONS PRESENTED

1. Whether the New Mexico State court which was held in *General Atomic Co.* v. *Felter*, 436 U.S. 493 (1978), to have no constitutional power to "interfere" with an arbitration protected by federal law may nullify that arbitration after it has been held by vacating the arbitrators' final award on the ground that the arbitrators had no authority except "to dismiss the proceedings."

2. Whether Section 10 of the Federal Arbitration Act permits a New Mexico State court

(a) to substitute its own judgment for that of the arbitrators on the question whether earlier proceedings of the New Mexico court were *res judicata* and entitled to full faith and credit; and

(b) to vacate an arbitration award entered in California.

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Petitioners GA Technologies Inc. and General Atomic Company (hereinafter "GAC")[1] respectfully pray that a writ of certiorari issue to review the judgment issued by the Supreme Court of the State of New Mexico in this case on September 15, 1982.

[1] GA Technologies Inc. is the successor in interest to General Atomic Company, a partnership that had been the party in interest from 1974 until October 29, 1982. On that date the partnership transferred essentially all its businesses, including, *inter alia*, General Atomic Company's contracts with United Nuclear Corporation and the arbitration awards involved in this case, to GA Technologies Inc., a newly formed California corporation wholly owned by Gulf Oil Corporation. A motion to substitute parties is being filed contemporaneously with this Petition. General Atomic Company is a partnership whose constituent partners are Gulf Oil Corporation and Scallop Nuclear Inc. Scallop is a subsidiary of the Royal Dutch-Shell Group.

OPINIONS BELOW

The opinion of the Supreme Court of New Mexico (Pet. App. A, pp. 1a-19a)[2] is reported at 651 P.2d 1277. The opinion, decision, and judgment of the District Court of Santa Fe County, New Mexico (Pet. App. B, pp. 20a-35a) are not reported.

JURISDICTION

The judgment of the Supreme Court of New Mexico was entered on September 15, 1982. GAC's timely motion for rehearing was denied by the New Mexico Supreme Court on October 4, 1982 (Pet. App. C, p. 36a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTE INVOLVED

Section 10 of the Federal Arbitration Act, 9 U.S.C. § 10, provides:

> § 10. Same; vacation; grounds; rehearing
>
> In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> (a) Where the award was procured by corruption, fraud, or undue means.
>
> (b) Where there was evident partiality or corruption in the arbitrators, or either of them.
>
> (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence

[2] The Appendices to this Petition are printed in a separate volume.

pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

STATEMENT

Introduction

In *General Atomic Co.* v. *Felter*, 434 U.S. 12 (1977) (*"Felter I"*), and *General Atomic Co.* v. *Felter*, 436 U.S. 493 (1978) (*"Felter II"*), this Court reversed unconstitutional New Mexico State court orders that had prohibited GAC from pursuing arbitration under the Federal Arbitration Act of a multi-million-dollar dispute with United Nuclear Corporation ("UNC"). Following these decisions, arbitration was held in San Diego, in the Southern District of California. The arbitration panel issued partial and final arbitration awards in GAC's favor. Pet. Apps. D and E, pp. 37a-135a. The New Mexico State court has now vacated the final award on the ground that judgments of that court, issued while GAC was unlawfully enjoined from exercising its federal arbitration rights, finally resolved all disputes between GAC and UNC and left nothing to arbitrate. The New Mexico court disregarded the fact that this very contention had been submitted by both parties to arbitration and squarely rejected by a majority of the arbitrators. With its holding, the New Mexico court reduced GAC's "absolute right to present its claims to federal forums" (436 U.S. at

497)—which this Court had twice vindicated—to a meaningless right of "access" to a federal forum that, according to the New Mexico court, had no authority to consider or decide any issue whatever.

1. Arbitration Is Unconstitutionally Barred.

On December 31, 1975, UNC sued GAC in a New Mexico State court seeking to void a long-term contract in interstate commerce under which UNC was to supply GAC with 25 million pounds of uranium. This agreement included an arbitration clause providing for compulsory arbitration of "any disputes, which may arise between the parties during the course of" the contract. In March 1976, before an answer to the complaint had to be filed, GAC formally expressed its intention to arbitrate with UNC pursuant to this provision. At UNC's request, the trial court promptly issued a preliminary injunction prohibiting, *inter alia*, "the institution or prosecution of . . . arbitration proceedings." The injunction remained in effect, notwithstanding GAC's appeals, until 18 months later when, in October 1977, this Court held that GAC had "every right to attempt . . . under . . . the Federal Arbitration Act" to defend itself by bringing UNC into "federal arbitration proceedings." *Felter I*, 434 U.S. at 18.

On the day after the New Mexico trial court vacated its injunction as a result of this Court's decision in *Felter I*, GAC filed a demand for arbitration in San Diego, California, of its dispute with UNC and moved simultaneously for a stay of the then ongoing State court proceedings pending that arbitration.[3] The New Mexico court denied

[3] The recitation of the history of this litigation in the opinion of the New Mexico Supreme Court is not an even-handed one. Illustrative is the court's description of GAC's demand for arbitration. The court said in its opinion (Pet. App. A, p. 4a):

GAC's motion and granted a cross-motion by UNC for a "stay" of the San Diego arbitration. These orders were based principally on a ruling that GAC had waived its right to arbitrate by failing to demand arbitration while the injunction prohibiting arbitration had been in effect.

GAC asked this Court to issue a writ of mandamus on the ground that the "stay" of arbitration violated this Court's mandate in *Felter I*. While GAC's petition was pending (and thus while the "stay" of arbitration remained in effect), the New Mexico trial court, citing GAC's alleged noncompliance with discovery orders, entered a default judgment declaring void the uranium supply contract which contained the arbitration clause.[4]

Twenty-three months after the filing of the complaint and one month into the trial on the merits, GAC moved to stay the trial, alleging that it had started arbitration proceedings in San Diego. Surely the New Mexico court could not fairly report that the demand for arbitration came 23 months after the complaint was filed and one month after trial began without also noting that until the day before that demand an injunction held illegal by this Court had prohibited any demand for arbitration outside New Mexico. Other factual and legal deficiencies in the opinion of the New Mexico Supreme Court were enumerated in GAC's motion for rehearing in that court and in GAC's supporting brief, which are reproduced as Pet. App. F, pp. 136a-151a.

[4] Both the judgment declining a stay of the New Mexico proceedings pending arbitration and the default judgment were subsequently affirmed by the New Mexico Supreme Court. This Court denied further review. *United Nuclear Corp.* v. *General Atomic Co.*, 93 N.M. 105, 597 P.2d 290, *cert. denied*, 444 U.S. 911 (1979) (denial of stay); *United Nuclear Corp.* v. *General Atomic Co.*, 96 N.M. 155, 629 P.2d 231 (1980), *app. dismissed and cert. denied*, 451 U.S. 901 (1981) (default judgment).

On May 30, 1978, with full knowledge of the default judgment, this Court reversed the New Mexico court's order "staying" arbitration. This Court's opinion held that in granting UNC this "stay" (436 U.S. at 496):

> the Santa Fe court has again done precisely what we held that it lacked the power to do: interfere with attempts by GAC to assert in federal forums what it views as its entitlement to arbitration.

This Court also held that the New Mexico court had no "power" to "interfere" with GAC's efforts to obtain arbitration, "on the ground that GAC is not entitled to arbitration or for any other reason whatsoever." 436 U.S. at 497. The Court concluded that GAC had "an absolute right to present its claims to federal forums," including arbitration pursuant to the Federal Arbitration Act. *Id.*

2. The Arbitration Is Held.

After the New Mexico court's second interference with arbitration was removed as a result of this Court's mandate, each party designated an arbitrator, and the parties' designees picked Justice Walter V. Schaefer, formerly Chief Justice of the Supreme Court of Illinois, as the chairman and neutral arbitrator.[5] UNC appeared before the arbitrators, filed a "protest," and argued to the panel, *inter alia*, that the New Mexico judgments entered while the illegal injunction was in effect were *res*

[5] UNC filed two lawsuits in federal district courts in New Mexico and California seeking to stop the arbitration and arguing that arbitration was precluded by the *res judicata* effect of the New Mexico judgments. Both courts ruled that UNC's *res judicata* claims were appropriate for decision by the arbitrators. See note 9, *infra*.

judicata so as to bar the arbitration and that GAC had waived arbitration.

The panel received briefs from both parties and conducted several days of hearings, in which both parties participated, in San Diego in March 1979. In November of that year, the majority issued a Partial Award resolving in GAC's favor the *res judicata* and waiver issues that UNC had raised. Pet. App. D, pp. 37a-66a. On the issue of *res judicata*, Justice Schaefer and W. Willard Wirtz (GAC's designated arbitrator) said in their opinion that UNC's arguments did not "address the unique full faith and credit question which this matter presents: What effect is to be given to a judgment entered by a state court after it has unlawfully barred a litigant from pursuing the federal remedy to which he is entitled?" *Id.* at 56a. Citing substantial precedent, the panel majority said it was "inescapable" (*id.* at 59a):

> that the Santa Fe Court lacked jurisdiction to proceed after it had unlawfully issued its injunction which prohibited GAC from exercising its Federal remedy . . . . Unless judgments of the Supreme Court of the United States are to be treated as meaningless gestures, the subsequent proceedings of the Santa Fe court were, in the language of the Supreme Court, "coram non judice," and they are not entitled to full faith and credit.

The panel then scheduled hearings on the merits to be held in San Diego in June 1980. On the eve of these hearings, UNC advised that it would not participate further, and UNC's designated arbitrator submitted his resignation. After recessing for one week to give UNC an opportunity to rejoin the proceeding, the remaining members of the panel continued with the hearings in accordance with the applicable rules of the American Arbitration Association. GAC offered oral and documen-

tary evidence for two weeks, and the panel required GAC not only to present a case-in-chief but also to respond to UNC's previously enumerated defenses.

On September 12, 1980, the two remaining members of the panel filed a comprehensive Final Award (Pet. App. E, pp. 92a-135a) in San Diego. The Final Award sustained GAC's contract claim and rejected UNC's defenses. The arbitrators awarded GAC damages for uranium deliveries UNC had failed to make, and ordered specific performance of UNC's future obligations.[6]

3. The Final Award Is Nullified.

In an effort to set aside the Partial and Final Awards, UNC returned to the New Mexico trial court that had illegally enjoined arbitration and had entered the default judgment against GAC. Rather than filing a new action to vacate the award as authorized in Section 10 of the Federal Arbitration Act, it filed "Petitions for Supplemental

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[6] GAC filed two actions for confirmation of the awards in California, but in neither action was the awards' validity decided. The United States District Court for the Southern District of California dismissed GAC's confirmation action on the ground that there was no federal subject-matter jurisdiction over the case. *See General Atomic Co.* v. *United Nuclear Corp.*, 655 F.2d 968 (9th Cir. 1981), *cert. denied*, 102 S.Ct. 1449 (1982). GAC's California State court confirmation action was terminated when the intermediate appellate court issued a writ of mandate ruling that the trial court could not exercise personal jurisdiction over UNC. *United Nuclear Corp.* v. *Superior Court*, 113 Cal.App.3d 359, 169 Cal. Rptr. 827 (1980), *cert. denied*, 454 U.S. 878 (1981). Contrary to the suggestion of the court below (Pet. App. A, p. 13a), these decisions are not *res judicata* of the validity of GAC's awards, since neither addressed any issue on the merits. Both were jurisdictional rulings.

Relief" in its prior action seeking to have the awards vacated and declared void. GAC responded, *inter alia*, (1) that such an order would violate this Court's rulings in *Felter I* and *Felter II;* (2) that the awards could be vacated only on grounds enumerated in Section 10 of the Federal Arbitration Act, and (3) that under Section 10 of the Act, the New Mexico courts had no authority to vacate or otherwise invalidate arbitration awards entered in the Southern District of California.

On January 9, 1981, the New Mexico trial court rejected GAC's contentions and vacated the Final Award. The court held that its own 1977 order refusing a stay of its proceedings was a "declaration" that GAC had waived its arbitration rights and that the dispute was not arbitrable, and that the legal effect of this "declaration" was "that any agreement to arbitrate no longer existed; it vanished, disappeared" (Pet. App. B, p. 25a). It also held that the default judgment—entered while the injunction against arbitration was in effect—meant that "there was no contract" and hence "no agreement to arbitrate." *Id.* On this basis the trial court substituted its own legal judgment for the conclusion of the arbitrators on the *res judicata* issue. Although the trial court invoked the language of Section 10(d) at the conclusion of its decision (*id.* at 27a, 32a), it did not actually apply the Act's enumerated standards. It simply dismissed Justice Schaefer's reasoned decision as "unfathomable sophistry," an attempt to "review and reverse the New Mexico Supreme Court," and "at best . . . a heedless disregard for the fundamental principles of American jurisprudence." *Id.* at 25a-27a.

The New Mexico Supreme Court affirmed the trial court's judgment vacating the Final Arbitration Award. It read this Court's decisions in *Felter I* and *Felter II* as

entitling GAC only to meaningless "access" to federal forums, which were obliged immediately to terminate their proceedings out of respect for the New Mexico court judgments *entered while arbitration had been unconstitutionally enjoined.* The New Mexico court stated that GAC's "substantive rights had all been concluded with final and binding judgments before the arbitration board handed down its award" and that these judgments established that "there was never anything to arbitrate" (Pet. App. A, pp. 5a, 11a).

The New Mexico Supreme Court brushed aside the facts that the *res judicata* issue had been submitted to the arbitrators by UNC, that UNC had told the arbitrators that they had the "power" to decide the issue, and that it had been decided by the arbitrators, in a detailed and reasoned opinion, in GAC's favor. While it echoed the trial court's conclusion that the arbitrators had exceeded their jurisdiction (*id.* at 11a), the New Mexico Supreme Court merely reaffirmed its own earlier holdings and overrode, on this ground alone, the judgment rendered by the arbitrators. It did not consider Justice Schaefer's Partial Award or evaluate the arbitrators' *res judicata* decision in light of Section 10.

Nor did the New Mexico court pause long over the provision in Section 10 specifying that "the United States court in and for the district wherein the award was made" could vacate an arbitration award. It held that it was "apparent that Section 10 relates to venue and not to jurisdiction" and that, while this provision limits the venue of federal courts, it is "not applicable to state courts." *Id.* at 16a. On this basis the New Mexico court reached beyond the borders of New Mexico to vacate the outcome of an arbitration that was conducted pursuant to the Federal Arbitration Act in California and that had resulted in an award made in California.

REASONS FOR GRANTING THE WRIT

The decision below culminates the obstruction of federal remedies which the New Mexico courts began with the unconstitutional injunction against arbitration in April 1976 and continued with the unconstitutional "stay" of arbitration in December 1977. This Court's decision in *Felter I* removed the first of these unlawful obstructions; its decision in *Felter II* set aside the second. The Court should act now to undo the New Mexico courts' attempt to achieve *after the arbitration* the very same result which they unconstitutionally sought to achieve by enjoining and staying the arbitration before it could begin.

Important issues of federalism are at stake. If the New Mexico courts are right, this Court's decisions in *Felter I* and *Felter II* accorded GAC (and other parties which may be subject to similar unlawful orders in the future) no substantive right whatever. The distinguished arbitrators who considered and resolved the issues presented to them by the parties were participants in a shadow play that could be treated by UNC and by the New Mexico courts as if it had never happened. This result makes a hollow shell of rights guaranteed by federal law and of the constitutional assurance of the Supremacy Clause.

In addition, serious and recurring questions concerning the administration of the Federal Arbitration Act were erroneously decided by the New Mexico courts. Subject only to the limited review allowed by Section 10, the Act grants conclusive authority to arbitrators' decisions on questions such as the *res judicata* defense to arbitration raised by UNC. The New Mexico courts cavalierly preempted that authority. They ignored the arbitrators' decision and rode roughshod over the precise limitations on judicial power prescribed by Section 10 of the Act. And by exempting State courts from the geographical limitations

imposed by Section 10, the New Mexico courts have cleared the way for intense forum-shopping in all future arbitrations conducted under Federal law.

I

THE NEW MEXICO COURTS MISUNDERSTOOD AND MISAPPLIED FELTER I AND FELTER II

GAC came to this Court between 1976 and 1978 as a victim of the New Mexico courts' unconstitutional interferences with its right to invoke federally-guaranteed remedies. Applying the Supremacy Clause principle that had been established in *Donovan* v. *City of Dallas*, 377 U.S. 408 (1964), this Court vindicated GAC's "right to pursue federal remedies and take advantage of federal procedures and defenses in federal actions." 434 U.S. at 18-19. During the time it took to secure this Court's rulings in *Felter I* and *Felter II*, the New Mexico courts entered orders and judgments which, they now claim, extinguished GAC's federal remedies before they could be pursued. If these events are permitted to stand as a basis for denying GAC meaningful arbitration under federal law, the Supremacy Clause doctrine established by *Donovan* v. *City of Dallas* becomes illusory. The course has then been charted for the denial of federal rights and remedies in every similar case. A party need only secure an injunction from a State court prohibiting resort to federal remedies and, while that injunction is being appealed, rush to judgment on the merits of the dispute, so that it can subsequently invoke that judgment as *res judicata* permanently to defeat the federal right.

The primary issue discussed by the New Mexico Supreme Court was the meaning of this Court's decisions in *Felter I* and *Felter II*. That court announced its view of "what *Felter I* did not do," emphasized its understanding of "[t]he whole impact of the opinion [in *Felter I*]," de-

scribed what it believed this Court "did not do in *Felter II*," and gave its interpretation of "[a] fair reading of the two *Felter* opinions" with an analysis of their "main thrust." It said that this Court's "mandates in *Felter I* and *Felter II* are narrow," and read the decisions as prohibiting only interference *in advance* with a federal arbitration, not as barring State court orders issued *after* the arbitration which "interfere" just as effectively with the arbitration remedy. Pet. App. A, pp. 3a-5a, 10a-11a.

This Court should review this case to correct the New Mexico court's meaningless distinction between a pre-arbitration injunction and a post-arbitration invalidation. That distinction undermines the important constitutional principle announced by the Court in *Felter I* and *Felter II*. Rather than prohibiting only a denial of "*access* to federal arbitration" (Pet. App. A, p. 10a, emphasis added), this Court's 1977 and 1978 decisions held that New Mexico courts "lacked the power to . . . *interfere with* attempts by GAC to assert in federal forums what it views as its entitlement to arbitration" (436 U.S. at 496, emphasis added). This was emphasized when this Court repeated that *Felter I* had "held that the Santa Fe court is without power under the United States Constitution *to interfere with* efforts by GAC to obtain arbitration in federal forums . . ." (436 U.S. at 497, emphasis added), and found it "inconceivable that upon remand from this Court the Santa Fe court was free *to again impede* GAC's attempt to assert its arbitration claims in federal forums" (436 U.S. at 497, emphasis added). "Interfering" and "impeding" can be accomplished as effectively by vitiating the results of an arbitration as by preventing it in the first place.[7] When this Court sustained GAC's "absolute right

[7] This Court has noted in another context that a declaratory judgment can "interfere" as effectively with a proceeding in another

to present its claims to federal forums" (436 U.S. at 497), it was surely not authorizing the eradication of that "absolute right" by an after-the-fact decision that the federal forum had no power to do anything except dismiss the claims being presented to it.[8]

Donovan v. *City of Dallas*, 377 U.S. 408 (1964), the precedent on which both *Felter I* and *Felter II* relied, establishes that the New Mexico court's understanding of the *Felter* decisions was erroneous. In *Donovan*, a State court had enjoined prosecution of a federal action on the ground that a State court judgment growing out of the controversy was *res judicata*. This Court reversed because of the Supremacy Clause. It did not hold that the prevailing party was entitled only to "access" to a federal court, which would then have to dismiss the action on *res judicata* grounds. In order to give meaning to the right to

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forum as an injunction prohibiting that proceeding. In *Samuels* v. *Mackell*, 401 U.S. 66, 73 (1971), this Court said:

> Ordinarily . . . the practical effect of the two forms of relief will be virtually identical, and the basic policy against interference with pending state criminal prosecutions will be frustrated as much by a declaratory judgment as it could be by an injunction.

[8] This Court's refusal in *Felter II* to go beyond the issues presented on mandamus and to vacate the New Mexico court's denial of a stay of its trial was not, as the New Mexico Supreme Court believed, a recognition of that court's authority to declare the arbitration void. Pet. App. A, pp. 10a-11a. This Court discerned that the refusal to stay the trial was not in itself a violation of the earlier mandate, so that it could not be the subject of a writ of mandamus. (*See* Justice Schaefer's discussion of this point in his Partial Award, Pet. App. D, pp. 47a-49a.) And this Court was certainly not authorizing the New Mexico court to invalidate the arbitration on the ground that the completed New Mexico proceedings were valid and forever binding.

prior State court judgment, this Court held that "whether or not a plea of *res judicata* in the second suit would be good *is a question for the federal court to decide.*" 377 U.S. at 412 (emphasis added).

In this case, UNC's claim of *res judicata* was, under *Felter I* and *Felter II*, a question for the federal arbitrators to decide. As UNC itself told the arbitrators in its written memorandum to the panel:

> The significance of the U.S. Supreme Court opinion *[Felter II]* concerning the disputes between UNC and GAC is apparent in light of the case of *Donovan* v. *City of Dallas*, 377 U.S. 408 (1964), which holds that claims of *res judicata* (or full faith and credit, for that matter) must be pressed before the tribunal where the suit pends (which UNC is doing before this Panel). . . .

After receiving briefs and hearing argument from both parties, the arbitrators did decide UNC's claims in GAC's favor. Just as Donovan's federal right would have lost all significance had the Texas State court in *Donovan* v. *City of Dallas* been permitted to decide whether its own prior judgment was to be *res judicata*, so is GAC robbed of its federal right if New Mexico has the last word on the binding effect of decisions rendered by its courts while they were blocking GAC's federal remedy with unconstitutional orders.

II

THE NEW MEXICO COURTS MISAPPLIED SECTION 10 OF THE FEDERAL ARBITRATION ACT

Two federal-law issues of substantial and recurring importance relating to the Federal Arbitration Act are also presented by the New Mexico court's decision. The sole legal authority to vacate an arbitration award is Section 10 of the Federal Arbitration Act, 9 U.S.C. § 10.

That provision of law carefully limits the power of a court reviewing arbitration awards to very specific grounds. The language and policy of the Act do not permit courts to engage in free-wheeling re-examinations of issues committed by the parties' agreement to resolution by arbitrators. Nor does Section 10 grant reviewing jurisdiction to a court in any district other than the one where the arbitration award was entered. Both of these issues are important and deserve plenary consideration.

A. Section 10 Bars A Court From Substituting Its Judgment For The Arbitrators' On An Issue, Such As The Res Judicata Effect Of Prior State-Court Judgments, Which The Arbitrators Had Power To Decide.

The New Mexico Supreme Court affirmed the trial court's decision that earlier New Mexico judgments "were final, the law of the case, *res judicata* and entitled to full faith and credit" (Pet. App. A, p. 14a). This judicial conclusion conflicted squarely with the conclusion which had been reached by a majority of the arbitration panel in its Partial Award after it had considered the issues argued by both parties in briefs and in extensive oral presentations.

(1) *The Arbitrators' Power.*—The broad language of the parties' arbitration clause committed to the arbitrators all legal and factual disputes arising "during the course of" the uranium supply agreement. This Court's decision in *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), makes it clear that arbitrators have jurisdiction, under such a clause, to determine even issues affecting the validity of the contract in which the clause is found. In this case UNC told the arbitrators, "[Y]ou have the jurisdiction and power to decide whether [the New Mexico judgments] . . . are *res judicata*. . . . You have the power, you have the jurisdiction." And two

federal district judges also said in related litigation that the arbitrators had jurisdiction to decide this question.[9]

(2) *The Limits on a Reviewing Court.*—Since the *res judicata* question was within the jurisdiction of the arbitrators, they did not "exceed their powers" for purposes of Section 10(d) of the Federal Arbitration Act by deciding that question. The arbitrators' decision could therefore be vacated by a court *only* on grounds such as "corruption, fraud, or undue means" or "evident partiality in the arbitrators," none of which was involved in this case. The New Mexico Supreme Court and the trial court paid lip service to the "excess of power" standard in Section 10(d), but the basis for their decision was clearly and simply their disagreement with the arbitrators' conclusion on the *res judicata* effect of the prior judgments. In this respect, the New Mexico Supreme Court's opinion

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[9] In 1978, shortly before the arbitration began, the United States District Court for the District of New Mexico ruled in a proceeding brought by UNC to stop the arbitration that "the language of the arbitration clause in the disputed contract appears broad enough to allow the arbitrators to hear" the issue of *res judicata*. *United Nuclear Corp.* v. *American Arbitration Ass'n*, No. 78-522-B (D.N.M. Sept. 27, 1978) (Bratton J.). After the arbitration panel had issued its Partial Award, the United States District Court for the Southern District of California referred with approval to this holding and stated (*United Nuclear Corp.* v. *General Atomic Co.*, No. 79-329-E (S.D. Cal. May 7, 1980) (Enright, J.)):

> The parties have submitted [UNC's *res judicata* claim] to the arbitration panel in San Diego and have received an opinion, demonstrating that the alternative forum [arbitration] is indeed available and being utilized.

These unreported decisions are reproduced as Pet. App. G and Pet. App. H, pp. 152a-165a.

conflicts with numerous decisions by federal courts that strictly limit judicial review of arbitration awards. *See, e.g., National R.R. Passenger Corp.* v. *Chesapeake & Ohio Ry.*, 551 F.2d 136, 152 (7th Cir. 1977); *Aerojet-General Corp.* v. *American Arbitration Ass'n*, 478 F.2d 248, 252 (9th Cir. 1973); *Saxis Steamship Co.* v. *Multifacs International Traders, Inc.*, 375 F.2d 577, 581-82 (2d Cir. 1967).

Federal courts have expressly recognized that questions of *res judicata* are no different from any other issue that is within the jurisdiction of arbitrators. *Boston & Maine Corp.* v. *Illinois Central Railroad Co.*, 396 F.2d 425 (2d Cir. 1968), *aff'g* 274 F. Supp. 257 (S.D.N.Y. 1967); *Refino* v. *Feuer Transportation, Inc.*, 480 F. Supp. 562 (S.D.N.Y. 1979), *aff'd*, 633 F.2d 205 (2d Cir. 1980). In the *Boston & Maine* case, the court reviewed the decision of an arbitration panel not to give binding effect to an earlier State judgment. Writing for a unanimous panel of the Second Circuit, Judge Friendly observed that if the court were to consider that question *de novo*, it would be "disposed to" rule the other way. 396 F.2d at 425. He concluded, however, that the parties were "bound by" the arbitrators' decision. 396 F.2d at 426.[10]

(3) *The Public Policy.*—It is essential to the proper implementation of the Federal Arbitration Act that

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[10] The *Refino* case also concerned an arbitrator's ruling on a claim of *res judicata*. The district judge said (480 F. Supp. at 567):

> [E]ven if the arbitrator erroneously applied the doctrine of *res judicata* to the JLC decision, there would still be no basis for vacating the award. "It is a truism that an arbitration award will not be vacated for a mistaken interpretation of law." *Sobel* v. *Hertz, Warner & Co.*, 469 F.2d 1211, 1214 (2d Cir. 1972).

courts not be permitted freely to substitute their judgment on legal issues for the judgment of arbitrators. If this limitation is not followed, "the ostensible purpose for resort to arbitration, *i.e.*, avoidance of litigation, would be frustrated." *Amicizia Societa Navegazione* v. *Chilean Nitrate & Iodine Sales Corp.*, 274 F.2d 805, 808 (2d Cir. 1960). The New Mexico courts have jeopardized the efficacy of the arbitration remedy with the decision they have rendered in this case. Consequently, this Court should review the New Mexico judgment and reverse it so that the applicable standards of review under Section 10 will be clear and unequivocal.

B. A New Mexico Court May Not Vacate An Arbitration Award Made In California.

Section 10 of the Federal Arbitration Act confers the authority to vacate an arbitration award on "the United States court in and for the district wherein the award was made." The New Mexico Supreme Court held that this provision did not preclude it from invalidating awards made in the Southern District of California, ruling that Section 10's "provisions limit federal court venue but are not applicable to state courts" (Pet. App. A, p. 16a). To our knowledge, this is the first time in the 57-year history of the Federal Arbitration Act that any court, State or federal, has ever so held.

Unless reversed, this ruling will create an anomaly that will threaten the simplicity and efficacy of the scheme that the Federal Arbitration Act establishes for review of arbitration awards. Federal courts have uniformly held that only a court specified in Section 10 (a court "in and for the district wherein the award was made") may vacate an award. The Act prohibits vacation of an award by all courts outside the district where the award was made,

including even a court which had jurisdiction over the underlying controversy, or courts which had previously ruled on a motion for a stay under Section 3 or on a motion to compel arbitration under Section 4. *United States* v. *Ets-Hokin Corp.*, 397 F.2d 935 (9th Cir. 1968); *City of Naples* v. *Prepakt Concrete Co.*, 490 F.2d 182 (5th Cir.), *cert. denied*, 419 U.S. 843 (1974); *see Arthur Imerman Undergarment Corp.* v. *Local 162, ILGWU*, 145 F. Supp. 14, 18 (D.N.J. 1956); *Long* v. *Marion Manufacturing Co.*, Civ. No. 74-659 (D.S.C. March 11, 1976) (reproduced in Appendix I to this Petition, pp. 166a-173a). The New Mexico Supreme Court has now established the principle that State courts need not honor this limitation. Under the view of the New Mexico courts, a party seeking to escape enforcement of an arbitration award may select the most favorable forum among the 50 State court systems, subject only to such limitations on personal jurisdiction and venue as States apply to any civil action.

The central purpose of the Federal Arbitration Act is to "allow parties to avoid 'the costliness and delays of litigation.'" *Scherk* v. *Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974). The New Mexico Supreme Court's interpretation of Section 10 undermines this purpose. It will encourage forum-shopping, races to judgment among coordinate courts, and efforts by courts to enjoin proceedings in other jurisdictions.

The New Mexico Supreme Court advanced no reason why Congress would have chosen an anomalous scheme for judicial review in which the power to vacate arbitration awards subject to the Act would be limited to only one designated federal court "in and for the district wherein the award was made," while a party could take

the same request to any State court in the country.[11] This Court should correct the error of the New Mexico courts and thereby protect parties in federal arbitrations and State courts from the forum-shopping and judicial rivalry which is likely to ensue if this decision stands.

[11] This anomaly is rendered more striking in light of the authority to remove a case to federal court under 28 U.S.C. § 1441. If the losing party in an arbitration attempts to vacate the award in a State court in a jurisdiction other than where the award was made and the prevailing party removes the suit, the federal court in the second jurisdiction will face the choice of reviewing the award notwithstanding the limitation of Section 10 or dismissing the suit notwithstanding its proper removal.

CONCLUSION

For the foregoing reasons, this Court should grant GAC's Petition for a Writ of Certiorari.

Respectfully submitted,

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